

### **REMARKS**

Claims 1-16 are pending. Claims 17-32 have been withdrawn. New claims 33 and 34 have been added. Support for the new claims may be found on, for example, page 26, lines 20-26 of the specification. Claims 1-16, 33 and 34 are pending.

The Examiner's remarks in the last Office Action are addressed below. It is believed that the claims and all dependent claims, taken in light of the remarks made herein, meet all criteria for patentability.

### **CLAIM REJECTIONS**

#### ***Rejection under 35 U.S.C. § 103(a)***

##### ***Ang***

The Examiner has rejected claims 1, 6, 9, 10, 11, and 12 under 35 U.S.C. §103(a) as being unpatentable over EP 1 157 618 to Ang ("Ang"). See Office Action at pages 2-3. Claims 6, 9, 10, 11, and 12 depend from independent claim 1.

Applicants have discovered a natamycin dosage form that includes microcapsules where natamycin is encapsulated within a physiologically acceptable shell to provide a protected food preservative natamycin product. See claim 1.

Ang teaches a "food ingredient composition having anti-mycotic and anti-caking functionality ...." See Abstract. Ang teaches that anti-caking materials are typically porous which causes the anti-mycotic compound to be absorbed into the anti-caking agent, if the two components are just blended together. See paragraphs 3 and 9. This results in a combination that is "ineffective in treating mould, yeast and fungal growths when the anti-mycotic is added in concentrations within food safety regulation limits since the direct action anti-mycotic is unavailable to contact and eliminate mould, yeast and fungal growths in a food material." See paragraph 9. To prevent this problem, Ang teaches that the "direct action anti-mycotic material is coated on particles of the encapsulated anti-caking material, where the anti-mycotic material is on or near the surface of the particles of encapsulated anti-caking material." See paragraph 11. (emphasis added).

Ang does not teach, suggest or provide any motivation to provide a natamycin dosage form that includes microcapsules where natamycin is encapsulated within a physiologically

acceptable shell to provide a protected food preservative natamycin product. See claim 1. This is distinct from the natamycin in Ang which is added on the surface of the anti-caking agent. See paragraph 11.

As such, claim 1 and claims that depend therefrom are patentable over Ang. Applicants respectfully request reconsideration and withdrawal of this rejection.

***21 CFR 172.155 in view of Morgan***

The Examiner has rejected claims 1-8 under 35 U.S.C. §103(a) as being unpatentable over 21 CFR 172.155 in view of U.S. Patent No. 5,204,029 to Morgan ("Morgan"). See Office Action at pages 3-4. Claims 2-8 depend from independent claim 1.

The Examiner contends that "[i]t would have been obvious to one of ordinary skill in the art to utilize natamycin in the microcapsule of Morgan as one of a host of permitted anti-microbial agents for use in cheese." See Office Action at pages 3-4.

Applicants have discovered a natamycin dosage form that includes microcapsules where natamycin is encapsulated within a physiologically acceptable shell to provide a protected food preservative natamycin product. See claim 1.

21 CFR 172.55 teaches that natamycin is permitted in foods and is restricted to use of the surface of cheese. See page 1. 21 CFR 172.55 does not teach or suggest any particular delivery system for natamycin, specifically not a natamycin dosage form that includes microcapsules where natamycin is encapsulated within a physiologically acceptable shell to provide a protected food preservative natamycin product. See claim 1.

Morgan discloses making microcapsules having "a solid, fusible shell and a multiplicity of liquid cores" and notes that the microcapsules may include anti-mycotic agents (see Abstract and col. 5, lines 39-42). Morgan teaches microcapsules that "have a multiplicity of cores surrounded by a shell." See col. 3, lines 7-8. Morgan does not teach or suggest a natamycin dosage form that includes microcapsules where natamycin is encapsulated within a **physiologically acceptable shell** to provide a protected food preservative natamycin product. See claim 1.

None of the above-cited references, alone or in combination, teach or suggest a natamycin dosage form that includes microcapsules where natamycin is encapsulated within a

**physiologically acceptable shell** to provide a protected food preservative natamycin product.

See claim 1. Moreover, even if all the elements of a claim are taught by a combination of references, (which Applicants do not concede to be the case here), there is no *prima facie* case of obviousness in the absence of motivation to combine the references. MPEP 2143.01, citing *In re Rouffet*, 194 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998). Accordingly, claim 1 and claims that depend therefrom are patentable over the above-cited references. Applicants respectfully request the withdrawal of the rejection.

***Thies in view of Stark***

The Examiner has rejected claims 1, 6, 9-16 under 35 U.S.C. §103(a) as being unpatentable over Thies ("Microencapsulation." *Kirk-Othmer Encyclopedia of Chemical Technology*, December 4, 2000) ("Thies") in view of Stark ("Natamycin." *Food Preservatives*, 2<sup>nd</sup> Edition (2003) p.179-95). See Office Action at page 4. Claims 6, and 9-16 depend from independent claim 1.

Thies teaches different ways of making microcapsules. As acknowledged by the Examiner, Thies does not suggest a natamycin dosage form that includes microcapsules where natamycin is encapsulated within a physiologically acceptable shell to provide a protected food preservative natamycin product. See claim 1. Stark does not remedy this defect in Thies. While Stark discloses the physical properties of natamycin, Stark does not teach, suggest or provide any motivation to provide a natamycin dosage form that includes microcapsules where natamycin is encapsulated within a physiologically acceptable shell to provide a protected food preservative natamycin product. See claim 1. Both Stark and Thies do not suggest a natamycin dosage form that includes microcapsules where natamycin is encapsulated within a physiologically acceptable shell to provide a protected food preservative natamycin product. See claim 1.

Accordingly, claim 1 and claims that depend therefrom are patentable over the above-cited references. Applicants respectfully request the withdrawal of the rejection.

**CONCLUSION**

For the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the pending rejections. Applicants believe that the claims now pending are in condition for allowance.

Should any further fees be required by the present Amendment, the Commissioner is hereby authorized to charge Deposit Account **19-4293**.

If, for any reason, a telephonic conference with the Applicant would be helpful in expediting prosecution of the instant application, the Examiner is invited to call Applicant's Attorney at the telephone number provided below.

Respectfully submitted,

Date: 5-5-06



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